

Allen T. Reed, SID No. 10546594

Full Name/Prisoner Number

Oregon State Penitentiary

Complete Prison Address (Place of Confinement)

2605 State Street NE,

Salem, Oregon 97301

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

2:21-cv-01499-HZ

Civil Action No. 201313957
(To be supplied by the Court)

Allen T. Reed, SID No. 10546594, Applicant,
(Full Name and Prisoner Number)

v.

Brandon Kelly, Supt., OSP, Respondent,
(Name of Warden, Superintendent, jailor
or authorized person having custody of
applicant) (Do not use et al.)

and

The Attorney General of the State of

ELLEN ROSENBLUM, Additional Respondent.

APPLICATION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

Note: If the applicant is attacking a judgment which imposed a sentence to be served in the future, applicant must fill in the name of the state where the judgment of conviction was entered. If the applicant has a sentence to be served in the future under a federal judgment, which he/she wishes to attack, he/she should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.

CONVICTION UNDER ATTACK

1) Name and location of the court which entered the judgment of conviction under attack Lane County Circuit Court, 125 East 8th Avenue, Eugene, OR 97401.

2) Date judgment of conviction was entered November 26, 2013

3) Case number 201313457 and 201314881

4) Type and length of sentence imposed 362 months prison

5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes No x

6) Nature of the offense involved (all counts) 201313457 - Ct. 1 - Kidnapping 2, Ct. 2 - Rape 1, Ct. 3 - Sex Abuse 1, Ct. 4 - Sodomy 1, Ct. 5 - Sex Abuse 2, Count 6 - Coercion. 201314881 - Ct. 1 - Theft 1, Ct. 2 - Felon in Possession of Firearm.

7) What was your plea? (check one)

Not Guilty x Guilty Nolo Contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another court or indictment, give details:

8) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement

9) Kind of trial (check one) Jury x Judge only

10) Did you testify at trial? Yes x No

DIRECT APPEAL

11) Did you appeal from the judgment of conviction? Yes x No ____

12) If you did appeal, give the name and location of the court where the appeal was filed, the result, the case number and date of the court's decision (or attach a copy of the court's opinion or order): Oregon Court of Appeals, Salem, Oregon. State v. Reed, 274 Or App. 507, 364 P.3d 47 (2015). Oregon Supreme Court, Salem, Oregon. State v. Reed, 358 Or. 611, 369 P.3d 386 (2016)

Appellate Judgment Effective March 28, 2016.

13) If you did not appeal, explain briefly why you did not:

a) Did you seek permission to file a late appeal? Yes ____ No x

POST-CONVICTION PROCEEDINGS

14) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes x No ____

15) If your answer to 14 was "Yes," give the following information:

a) FIRST petition, application or motion.

1. Name of court Marion County Circuit Court, Case No. 17CV13538

2. Nature of proceeding Petition for Post-Conviction Relief.

3. Claims raised See Attachment 1

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes x No ____

5. Result Denied

6. Date of result February 21, 2019.

7. Did you appeal the result to the highest state court having jurisdiction?
Yes x No ____ If you did appeal, give the name of the court where the
appeal was filed, the result, the case number, citation and date of the court's
decision (or attach a copy of the court's opinion or order)

Oregon Court of Appeals: _____

Oregon Supreme Court: _____

8. If you did not appeal, briefly explain why you did not

b) As to any SECOND petition, application or motion, give the following
information:

1. Name of court _____

2. Nature of proceeding _____

3. Claims raised _____

4. Did you receive an evidentiary hearing on your petition, application or
motion? Yes ____ No ____

5. Result _____

6. Date of result _____

7. Did you appeal the result to the highest state court having jurisdiction?
Yes ____ No ____ If you did appeal, give the name of the court where the
appeal was filed, the result, the case number, citation and date of the court's
decision (or attach a copy of the court's opinion or order) _____

8. If you did not appeal, briefly explain why you did not _____

c) As to any THIRD petition, application or motion, give the following information:

1. Name of court _____

2. Nature of proceeding _____

3. Claims raised _____

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ___ No ___

5. Result _____

6. Date of result _____

7. Did you appeal the result to the highest state court having jurisdiction? Yes ___ No ___ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) _____

8. If you did not appeal, briefly explain why you did not _____

CLAIMS

16) State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims and supporting facts. You should raise in this petition all claims for relief which relate to the conviction under attack.

In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court.

Claim One: Violation of right to a fair trial by an impartial jury - Fifth, Sixth and Fourteenth Amendments - U.S. Constitution.

Ineffective Assistance of Trial Counsel – Sixth Amendment, US Constitution:

Failure to Object to Joinder of Case Nos. 201313457 and 201314881

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim) Trial counsel failed to object to improper consolidation of separately indicted charges for trial. Trial counsel then failed to seek severance of those charges by motion. As a result, the state introduced prejudicial evidence which, but for, counsel's failures, the jury would not have considered during separate trials. In addition, as a result of counsel's failures, petitioner took the stand and provided extremely damaging testimony when he would not otherwise have done so, and suffered severe prejudice from impeachment with prior felony convictions which but for his testimony and counsel's failure to object to consolidation and/or seek severance, the jury would not have received.

(2) Statement of exhaustion of state remedies as to claim one:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?

Yes ____ No x

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not Constitutional violations unpreserved and claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. State v. McKarge, 78 Or App 667,668, 717 P2d 656 (1986) (per curiam).

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes x No ____

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision
Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538
Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition? Yes x
No ____

(f) Did you appeal from the denial of your motion or petition?
Yes x No

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No . and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)
Oregon Court of Appeals: _____

Oregon Supreme Court: _____

(h) If your answer to question (e), (f) or (g) is "No," briefly explain _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

Claim Two: Violation of right to a fair trial by an impartial jury - Fifth, Sixth and Fourteenth Amendments - U.S. Constitution.

Ineffective Assistance of Trial Counsel – Sixth Amendment U.S. Constitution

Failure to Exercise Peremptory Challenges

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim) Trial counsel failed to exercise an available peremptory challenge to excuse Juror D.V. who was admittedly unable to decide petitioner's charges in a fair and impartial manner because his daughter was a rape victim, his son was the victim of violent assault, he had family or close personal friends in law enforcement and expressed during voir dire that just the mention of petitioner's charges caused him to experience physical distress. Although trial counsel had additional peremptory challenges available and knew or should have known of the need to excuse Juror D.V., he failed to do so. Juror D.V. remained on petitioner's jury and became its foreperson.

(2) Statement of exhaustion of state remedies as to claim two:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes ___ No x

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not Constitutional violations unpreserved and claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. State v. McKarge, 78 Or App 667, 668, 717 P2d 656 (1986) (per curiam).

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes x No ___

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision
Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538 Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition?
Yes x No ___

(f) Did you appeal from the denial of your motion or petition?
Yes x No ___

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No ___, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)
Oregon Court of Appeals:

Oregon Supreme Court:

(h) If your answer to question (e), (f) or (g) is "No," briefly explain _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

Claim Three: Violation of right to a fair trial by an impartial jury - Fifth, Sixth and Fourteenth Amendments, U.S. Constitution

Ineffective Assistance of Trial Counsel – Sixth Amendment, U.S. Constitution: Failure to Advise Petitioner on statutory stipulation to avoid impeachment with prior felony convictions

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in of this claim) Trial counsel failed to inform petitioner he could enter a statutory stipulation to avoid introduction of evidence that he was a convicted felon. Believing that regardless of whether he testified, the jury would receive evidence of his prior felony conviction to prove the felon in possession of a firearm charge which was before the jury because of counsel's failure to object to consolidation and/or seek severance, petitioner took the stand and testified to his severe detriment both by damaging testimony and by impeachment with multiple prior felony convictions and inadequate instruction to insulate him from that harm. Trial counsel further failed to prepare petitioner to testify which resulted in petitioner providing extremely damaging testimony.

(2) Statement of exhaustion of state remedies as to claim three:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?

Yes ___ No x

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not Constitutional violations unpreserved and claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. State v. McKarge, 78 Or. App. 667, 668, 717 P.2d 656 (1986) (per curiam)

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes x No ___

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision
Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538.
Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition?
Yes x No ____

(f) Did you appeal from the denial of your motion or petition?
Yes x No ____

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No ____ and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

Oregon Court of Appeals:

Oregon Supreme Court:

(h) If your answer to question (e), (f) or (g) is "No," briefly explain _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

17) Have all claims for relief raised in this petition been presented to the highest state court having jurisdiction? Yes x No ____

18) If you answered "No" to question 17, state which claims have not been so presented and briefly give your reasons(s) for not presenting them _____

19) If any of the claims listed in this application were not previously presented in any other court, state or federal, state briefly what claims were not so presented, and give your reasons for not presenting them _____

20) Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes ___ No x

If "Yes," answer the following and attach a copy of the court's decision for each petition, application, or motion filed:

- a) Name and location of court _____
- b) Type of proceeding _____
- c) The issues raised _____
- d) The result _____

SUCCESSIVE APPLICATIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the applicant shows that each claim satisfies the requirements of 28 U.S.C. § 2244, *as amended by* Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 106, 110 Stat. 1214 (Apr. 24, 1996).

21) If you are raising a claim which you have not presented in a prior application, have you obtained an order from the United States Court of Appeals for the Tenth Circuit authorizing this district court to consider the application? Yes ___ No ___ Please attach a copy of the order.

22) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes ___ No x If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding

LEGAL REPRESENTATION

23) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Mr. Robert Kaiser, OSB No. 083766, Public Defender Services of Lane County, 1143 Oak Street, Eugene, Oregon, 97401.

(b) At arraignment and plea Same as above.

(c) At trial Same as above.

(d) At sentencing Same as above.

(e) On appeal Ms. Morgen E. Daniels, OSB No. 075739, Office of Public Defense Services 1175 Court Street NE, Salem OR 97301.

(f) In any post-conviction proceeding Mr. Noel Grefenson, Attorney at Law, 1415 Liberty Street SE Salem, Oregon 97302.

(g) On appeal from any adverse ruling in a post-conviction proceeding Lindsey Burrows Attorney at law, O'Connor Weber LLC

OTHER CONVICTIONS

24) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes x No ___

25) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ___ No x

(a) If so, give name and location of court which imposed sentence to be served in the future _____

(b) and give date and length of service to be served in the future _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes ___ No ___

Wherefore, applicant prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Allen Reed
Applicant's Original Signature

Attorney's Full Address and
Telephone Number

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the applicant in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U. S. C. § 1746; 18 U. S. C. § 1621.

Executed at SRCI on 9-24-21
(Location) (Date)

Allen Reed
Applicant's Original Signature

(Petitioner's Habeas Claims Continued)

Claim Four:

Violation of right to a fair trial by an impartial jury - Fifth, Sixth and Fourteenth Amendments, U.S. Constitution.

Ineffective Assistance of Trial Counsel – Sixth Amendment, U.S. Constitution: Failure to Move for Judgment of Acquittal on Count 3 in Case No. 201313457.

(1) Supporting Facts: After the state rested its case in chief, trial counsel failed to move for a judgment of acquittal on the charge of first-degree sexual abuse as alleged in Count 3 of petitioner's indictment in Case No. 201313457 because, when considered in a light most favorable to the state, there was insufficient evidence from which the trier of fact could find that petitioner's alleged offense conduct constituted sexual contact as defined in ORS 163.305(6).

(2) Statement of exhaustion of state remedies as to claim four:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?

Yes ___ No x

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not: Constitutional violations unpreserved by objection and Sixth Amendment claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. *State v. McKarge*, 78 Or App 667, 668, 717 P2d 656 (1986) (per curiam).

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ___ x ___ No

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision: Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538 Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition? Yes x No ___

(f) Did you appeal from denial of your motion or petition?
Yes x No ___

(Petitioner's Habeas Claims Continued)

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No ____ and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

Oregon Court of Appeals: _____

Oregon Supreme Court: _____

(h) If your answer to question (e), (f) or (g) is "No," briefly explain. _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue. N/A.

Claim Five:

Violation of Right to a Fair Trial by and Impartial Jury - Fifth, Sixth and Fourteenth Amendments, U.S. Constitution.

Violation of Right to Testify – Fifth Amendment, U.S. Constitution.

Ineffective Assistance of Trial Counsel – Sixth Amendment, U.S. Constitution: Failure to Properly Prepare Petitioner to Testify.

(1) Supporting Facts: Before trial, trial counsel failed to adequately prepare petitioner to take the stand and testify in his own defense. Counsel failed to elicit from petitioner the testimony he intended to provide to the jury when he testified, identify portions of petitioner's proposed testimony that could seriously undermine his defense by unnecessarily damaging his character and credibility and thereby increase the probability of his conviction on all counts. As a result, petitioner testified that he was on parole at the time of the alleged offense conduct, was blatantly violating the conditions of his parole by using controlled substances and did not take his parole obligations seriously. Petitioner further described his physical and sexual interactions with the alleged victim in terms which a jury could deem aggressive and vulgar and thereby improperly infer that petitioner was possessed of a malignant character that one would expect from a person capable of committing his charged offenses and thereby convict him based on that improper inference.

(2) Statement of exhaustion of state remedies as to claim four:

(Petitioner's Habeas Claims Continued)

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?

Yes ___ No x

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not: Constitutional violations unpreserved by objection and Sixth Amendment claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. *State v. McKarge*, 78 Or App 667, 668, 717 P2d 656 (1986) (per curiam).

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes x No _____

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision: Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538 Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition? Yes x No ___

(f) Did you appeal from denial of your motion or petition?

Yes x No _____

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No _____ and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

Oregon Court of Appeals: _____

Oregon Supreme Court: _____

(h) If your answer to question (e), (f) or (g) is "No," briefly explain. _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue. N/A.

(Petitioner's Habeas Claims Continued)

Claim Six:

Violation of Right to a Fair Trial by and Impartial Jury - Fifth, Sixth and Fourteenth Amendments, U.S. Constitution.

Ineffective Assistance of Trial Counsel – Sixth Amendment, U.S. Constitution: Failure to Move for a Mistrial.

(1) Supporting Facts: During summation, trial counsel failed to object, move to strike and move for a mistrial when the prosecutor repeatedly made impermissible and inflammatory arguments to the jury concerning petitioner's demeanor at trial both on and off the stand, by purposefully misstating his criminal history of domestic violence, by improperly vouching for and bolstering the credibility of the alleged victim's accusations, by degrading petitioner's exercise of his right to a jury trial, by shifting the burden of proof from the state to the defense and by degrading petitioner's defense as a sham and suggesting his defense counsel was tasked with distorting the facts and truth.

(2) Statement of exhaustion of state remedies as to claim four:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?

Yes ___ No x

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not: Constitutional violations unpreserved and Sixth Amendment claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. *State v. McKarge*, 78 Or App 667, 668, 717 P2d 656 (1986) (per curiam).

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes x No _____

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision: Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538 Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition? Yes x No ___

(f) Did you appeal from denial of your motion or petition?

Yes x No ___

(Petitioner's Habeas Claims Continued)

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No ____ and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

Oregon Court of Appeals: _____

Oregon Supreme Court: _____

(h) If your answer to question (e), (f) or (g) is "No," briefly explain. _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue. N/A.

Claim Seven:

Violation of Right to a Fair Trial by and Impartial Jury - Fifth, Sixth and Fourteenth Amendments, U.S. Constitution.

Ineffective Assistance of Trial Counsel – Sixth Amendment, U.S. Constitution: Failure to Request Forcible Compulsion Instruction.

(1) Supporting Facts: At the time of petitioner's trial, Oregon precedent required the state to prove beyond a reasonable doubt that petitioner had knowingly and forcibly compelled the alleged victim to submit to the sexual acts alleged in Counts 2, 3 and 4 of Case No. 201313457, and required the court to so instruct his jury. Trial counsel failed to request that the court instruct the jury on the mens rea element of forcible compulsion and failed to take exception to the court's failure to so instruct the jury. At trial, the jury received evidence that any sexual acts which occurred between petitioner and the alleged victim were consensual.

(2) Statement of exhaustion of state remedies as to claim four:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?
Yes ____ No x

(Petitioner's Habeas Claims Continued)

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not: Constitutional violations unpreserved and Sixth Amendment claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. State v. McKarge, 78 Or App 667, 668, 717 P2d 656 (1986) (per curiam).

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes x No _____

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision: Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538 Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition? Yes x No _____

(f) Did you appeal from denial of your motion or petition? Yes x No _____

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No _____ and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

Oregon Court of Appeals: _____

Oregon Supreme Court: _____

(h) If your answer to question (e), (f) or (g) is "No," briefly explain. _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue. N/A.

(Petitioner's Habeas Claims Continued)

Claim Eight:

Due Process violation of right to a fair trial by an impartial jury - Fifth, Sixth and Fourteenth Amendments, U.S. Constitution.

Ineffective Assistance of Trial Counsel – Sixth Amendment, U.S. Constitution: Cumulative Error

(1) Supporting Facts: Petitioner incorporates Claims 1-7 above and alleges that when considered together, the number and seriousness of the multiple critical errors made by his trial counsel effectively denied him the right to a fair trial by an impartial jury, the right to confront the state's case, the right to present a defense and the right to effective and adequate representation by competent counsel.

(2) Statement of exhaustion of state remedies as to claim four:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue?

Yes ___ No x

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not: Constitutional violations unpreserved and Sixth Amendment claims of ineffective assistance of trial counsel cannot be raised on direct appeal in Oregon. State v. McKarqe, 78 Or App 667, 668, 717 P2d 656 (1986) (per curiam).

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes x No _____

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision: Petition for Post-Conviction Relief, Marion County Circuit Court Case No. 17CV13538 Claim denied February 21, 2019.

(e) Did you receive an evidentiary hearing on your motion or petition? Yes x No ___

(f) Did you appeal from denial of your motion or petition?

Yes x No _____

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes x No _____ and state the name and location of the court where the appeal was filed, the

(Petitioner's Habeas Claims Continued)

case number and the date of the court's decision (or attach a copy of the court's opinion or order)

Oregon Court of Appeals: _____

Oregon Supreme Court: _____

(h) If your answer to question (e), (f) or (g) is "No," briefly explain. _____

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue. N/A.